

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

Arizona Corporation Commission

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AZ Corporation Commission  
Director Of Utilities

IN THE MATTER OF THE JOINT APPLICATION  
OF TUCSON ELECTRIC POWER COMPANY  
AND CITIZENS COMMUNICATIONS  
COMPANY FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY FOR A  
PROPOSED 345 KV TRANSMISSION LINE  
SYSTEM FROM TUCSON ELECTRIC POWER  
COMPANY'S EXISTING SOUTH 345 KV  
SUBSTATION IN SEC. 36, T. 16S., R.13E,  
SAHUARITA, ARIZONA, TO THE PROPOSED  
GATEWAY 345/115 KV SUBSTATION IN SEC.  
12, T.24S., R.13E., NOGALES, ARIZONA WITH A  
115 KV INTERCONNECTION TO THE CITIZENS  
COMMUNICATIONS COMPANY'S 115 KV  
VALENCIA SUBSTATION IN NOGALES,  
ARIZONA, WITH A 345 KV TRANSMISSION  
LINE FROM THE PROPOSED GATEWAY  
SUBSTATION SOUTH TO THE  
INTERNATIONAL BORDER IN SEC. 13, T.24S.,  
R.13E.

DOCKET NO. L-00000C-01-0111  
DOCKET NO. L-00000F-01-0111

DECISION NO. 67509

ORDER

Open Meeting  
January 11 and 12, 2005  
Phoenix, Arizona

BY THE COMMISSION:

On December 3, 2004, Tucson Electric Power Company ("TEP") and UniSource Energy Services, Inc. ("UES") (collectively, "Joint Applicants") filed a Motion to Extend Time Limitation of Certificate of Environmental Compatibility ("Motion").<sup>1</sup>

In their Motion, the Joint Applicants ask that the Arizona Corporation Commission ("Commission"):

1. Extend the time limitation of the CEC, prior to January 15, 2005;

<sup>1</sup> The Motion was captioned using the docket numbers from the CEC application as well as Docket No. E-01032A-99-0401, a docket concerning service quality and other issues in Santa Cruz County, however, the dockets have not been consolidated, and separate orders will be issued for each docket.

2. Re-open the record in consolidated Docket Nos. L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the approved Preferred Route based upon information that has come to light after the issuance of Decision No. 64356<sup>2</sup>;
3. Convene a procedural conference to establish the scope, forum and schedule for the proceeding in the re-opened consolidated dockets; and
4. Waive the requirement in Decision No. 67151 (August 3, 2004) that the Federal Agency Records of Decision ("RODs") be provided with this Motion.

On December 14, 2004, the Commission's Utilities Division Staff ("Staff") filed a Response to the Joint Applicant's Motion.

In its Response, Staff requests that the Commission:

1. Grant an indefinite extension of time for the CEC beyond January 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-00000C-01-0111 and L-00000F-01-0111.
2. Bifurcate Dockets Nos. L-00000C-01-0111 and L-00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the Arizona Power Plant and Transmission Line Siting Committee ("Committee").
3. For Docket No. E-01032A-99-0401, establish a procedural schedule, including the filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report.
4. Grant the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

### **BACKGROUND**

On October 20, 1998, Citizens Utilities Company ("Citizens") filed with the Commission a notice of intent to form a holding company (Docket No. E-01032A-98-0611 et al). During the course

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<sup>2</sup> See Reporter's Special Open Meeting Transcript of Proceedings at 126.

1 of reviewing Citizens' application, the Commission issued Decision No. 61383 (January 29, 1999)  
2 which ordered Citizens to file an "Analysis of Alternatives and Plan of Action (Plan) to rectify the  
3 service problems in its Santa Cruz Electric Division. . . [t]he Plan should include a cost-benefit  
4 analysis of alternatives, the alternative chosen and proposed deadlines for implementation of the  
5 alternative chosen." (Decision No. 61383 at 2) In June of 1999, Citizens notified the Commission  
6 that the proposed reorganization would not take place, and by Procedural Order issued July 15, 1999,  
7 the holding company docket was closed and Docket No. E-0132A-99-0401 (the "Service Quality"  
8 docket) was opened to resolve the Commission's concerns regarding Citizens' Santa Cruz Electric  
9 Division.

10 On October 27, 1998, the City of Nogales, Arizona, filed a Complaint against Citizens  
11 concerning electrical outages in Nogales, Arizona (Docket No. E-01032B-98-0621). In its  
12 Complaint, the City of Nogales alleged that numerous electric outages caused by Citizens' failure to  
13 adequately maintain its transmission lines and back-up generation capacity had resulted in economic  
14 damages to Nogales and its residents and endangered the community's welfare. The City of Nogales  
15 and Citizens entered into a Settlement Agreement, and in Decision No. 61793 (June 29, 1999), the  
16 Commission dismissed the Complaint and ordered that Citizens provide a planned service date and  
17 cost-benefit analysis for system components of a second transmission line in the Plan of Action to be  
18 filed in compliance with Decision No. 61383.

19 In August 1999, the Commission's Utilities Division Staff and Citizens filed a Settlement  
20 Agreement regarding Citizens' Plan of Action, in the Service Quality Docket. The Settlement  
21 Agreement, which was approved by the Commission in Decision No. 62011 (November 2, 1999),  
22 committed Citizens to a Plan of Action which included a requirement that Citizens build a second  
23 transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a  
24 schedule for obtaining a Certificate of Environmental Compatibility ("CEC") and penalties if the  
25 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second  
26 transmission line; preserved Staff's right to challenge any capital expenditure associated with  
27 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures  
28 should be postponed until a filing is made to recover costs.

On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345 kV and 115kV Transmission Project ("Gateway Project" or "Project") for the preferred western route, which had been granted by the Committee. The Gateway Project incorporated the second transmission line required by Decision No. 62011. Need for the Gateway Project was established in that docket.

On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service Quality Docket. The Joint Applicants stated that additional time was necessary to obtain the required approvals from federal agencies. On October 10, 2003, TEP and UniSource Electric, Inc. ("UNS Electric") filed a supplement.<sup>3</sup> The supplement proposed to provide short-term relief until the second transmission line was constructed and became operational. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004; ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to file a Report on the sufficiency of the updated Outage Response Plan.

On February 9, 2004, TEP and UniSource Energy Services, Inc. ("UES") filed their updated Outage Response Plan and on March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated Outage Response Plan.

On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an "Application to Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for Consideration The Fulfillment of Decision No. 62011".

On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to review the status of compliance with Decision No. 62011 and the requested waiver of penalties. During the Special Open Meeting, the Commissioners discussed whether intervening circumstances, the passage of time, and what may be inconsistent results reached by the Committee and the Department of

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<sup>3</sup> Citizens sold its assets to UniSource Energy Corporation ("UNS") which formed UniSource Energy Services, Inc. (UES"). UNS is also the parent holding company for TEP. Citizens' CEC was transferred to UES.

1 Agriculture Forest Service necessitate the re-opening of the record in the Line Siting dockets. The  
2 Commissioners directed TEP and UES to reopen the docket in Decision No. 64356 granting the  
3 CEC.<sup>4</sup> Further, the Commissioners discussed the issues of reliability and need for a second  
4 transmission line, and indicated that these issues were appropriate for a hearing before a Commission  
5 Administrative Law Judge. The Commissioners expressed an interest in having this issue handled on  
6 a faster track, and invited parties to file pleadings in the event that they thought there were alternative  
7 ideas relating to the reliability issue in Santa Cruz County.<sup>5</sup> No such pleadings have been filed since  
8 the Special Open Meeting.

9 On August 3, 2004, the Commission issued Decision No. 67151 which waived the penalty  
10 provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject to  
11 numerous conditions contained in the order.

#### 12 DISCUSSION

13 Decision No. 64356 affirming the grant of the CEC contained a condition that authorization to  
14 construct the Project would expire three years from the date of the Decision. In Decision No. 67151,  
15 issued in August of 2004, the Commission authorized the Joint Applicants to seek an extension of  
16 that time limit. Without an extension, the CEC would expire January 15, 2005. Staff believes that  
17 since the Commission wants the record in the dockets to be re-opened to review information that has  
18 come to light after the CEC was granted, extending the time beyond January 15, 2005 is appropriate.  
19 Further, certain Federal Agencies must grant approval or permits prior to construction. No party to  
20 the dockets has objected to either the re-opening of the dockets, nor to the extension of the CEC  
21 approval.

22 Given the intervening circumstances, the passage of time, and what may be inconsistent  
23 results reached by the Power Plant and Transmission Line Siting Committee and the Federal  
24 Agencies, including the Department of Agriculture Forest Service, the record in Dockets L-00000C-  
25 01-0111 and L-00000F-01-0111 should be re-opened and referred to the Committee for further fact  
26 finding, review, and consideration.

27 \_\_\_\_\_  
28 <sup>4</sup> Transcript at 53, 54, 55

<sup>5</sup> Transcript at 54

Although Decision No. 67151 indicated that a completed Federal Environmental Impact Statement ("EIS") and associated Records of Decisions should be filed with a motion for extension of time limit, the Joint Applicants were unable to file such documents because they are not yet available. Accordingly, we will require the Joint Applicants to file the EIS and any RODs as soon as they are publicly available.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

### **FINDINGS OF FACT**

1. In Decision No. 62011 (November 2, 1999), the Commission approved a Settlement Agreement between Staff and Citizens which committed Citizens to a Plan of Action which included a requirement that Citizens build a second transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a schedule for obtaining a CEC and penalties if the schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second transmission line; preserved Staff's right to challenge any capital expenditure associated with constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures should be postponed until a filing is made to recover costs.

2. On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC.

3. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345 kV and 115kV Transmission Project for the preferred western route, which had been granted by the Arizona Power Plant and Transmission Line Siting Committee. The Gateway Project incorporated the second transmission line required by Decision No. 62011.

4. On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service Quality Docket.

5. On October 10, 2003, TEP and UNS Electric filed a supplement.

6. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004;

1 ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to  
2 file a Report on the sufficiency of the updated Outage Response Plan.

3 7. On February 9, 2004, TEP and UES filed their updated Outage Response Plan and on  
4 March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated  
5 Outage Response Plan.

6 8. On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an Application to  
7 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for  
8 Consideration The Fulfillment of Decision No. 62011.

9 9. On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to  
10 review the status of compliance with Decision No. 62011 and the requested waiver of penalties.  
11 During the Special Open Meeting, the Commissioners discussed whether intervening circumstances,  
12 the passage of time, and what may be inconsistent results reached by the Line Siting Committee and  
13 the Department of Agriculture Forest Service necessitate the re-opening of the record in the Line  
14 Siting docket. The Commissioners directed TEP and UES to reopen the docket in Decision No.  
15 64356 granting the CEC.

16 10. On August 3, 2004, the Commission issued Decision No. 67151 which waived the  
17 penalty provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject  
18 to numerous conditions contained in the order.

19 11. On December 3, 2004, the Joint Applicants filed a Motion to Extend Time Limitation  
20 of Certificate of Environmental Compatibility.

21 12. In their Motion, the Joint Applicants ask that the Commission: 1) extend the time  
22 limitation of the CEC, prior to January 15, 2005; 2) re-open the record in consolidated Docket Nos.  
23 L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the  
24 approved Preferred Route based upon information that has come to light after the issuance of  
25 Decision No. 64356; 3) convene a procedural conference to establish the scope, forum and schedule  
26 for the proceeding in the re-opened consolidated dockets; and 4) waive the requirement in Decision  
27 No. 67151 (August 3, 2004) that the Federal Agency Records of Decision be provided with the  
28 Motion.

1           13.    On December 14, 2004, Staff filed a Response to the Joint Applicants' Motion  
2 requesting that the Commission: 1) grant an indefinite extension of time for the CEC beyond January  
3 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-  
4 00000C-01-0111 and L-00000F-01-0111; 2) Bifurcate Dockets Nos. L-00000C-01-0111 and L-  
5 00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the  
6 Committee; 3) for Docket No. E-01032A-99-0401, establish a procedural schedule, including the  
7 filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report; 4) grant  
8 the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long  
9 as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

10           14.    Given the intervening circumstances, the passage of time, and what may be  
11 inconsistent results reached by the Power Plant and Transmission Line Siting Committee and the  
12 Federal Agencies, including the Department of Agriculture Forest Service, the record in Dockets L-  
13 00000C-01-0111 and L-00000F-01-0111 should be re-opened and referred to the Line Siting for  
14 further fact finding, review, and consideration.

15           15.    Pursuant to Decision No. 67151, the Joint Applicants were to have filed the completed  
16 Federal EIS and associated RODs with the motion for extension of time limit, however, the Joint  
17 Applicants were unable to file such documents because they are not yet unavailable.

18           16.    The Joint Applicants should file the EIS and any RODs as soon as they are publicly  
19 available.

#### 20                                   CONCLUSIONS OF LAW

21           1.    TEP and UNS Electric are public service corporations within the meaning of Article  
22 XV, Section 2 of the Arizona Constitution.

23           2.    The Commission has jurisdiction over TEP and UNS Electric and over the subject  
24 matter of this docket.

25           3.    There is good cause to grant the Motion to Extend Time Limitation of Certificate of  
26 Environmental Compatibility.

27           4.    There is good cause to waive the requirement of Decision No. 67151 that Federal  
28 Agency Records of Decision and Federal Environmental Impact Statement accompany the Motion to



1 Extend Time Limitation.

2         5.       There is good cause to re-open the record in Docket Nos. L-00000C-01-0111 and L-  
3 00000F-01-0111 to review alternatives to the approved Preferred Route based upon information that  
4 has come to light after the issuance of Decision No. 64356 and to review the evidence presented in  
5 Docket No. E-01032A-99-0401, pursuant to A.R.S. § 40-252.

6         6.       Pursuant to A.R.S. § 40-360.06, the Committee and the Commission will review the  
7 new information and make the appropriate determinations.

8                                 **ORDER**

9         IT IS THEREFORE ORDERED that the Motion to Extend Time Limitation of Certificate of  
10 Environmental Compatibility is granted and the authorization to construct the Project will expire one  
11 year from the date that all required approvals have been obtained.

12         IT IS FURTHER ORDERED that Docket Nos. L-00000C-01-0111 and L-00000F-01-0111  
13 are re-opened and referred to the Power Plant and Transmission Line Siting Committee to review  
14 alternatives to the approved Preferred Route based upon information that has come to light after the  
15 issuance of Decision No. 64356 and to review the evidence presented in Docket No. E-01032A-99-  
16 0401, pursuant to A.R.S. § 40-252.

17         IT IS FURTHER ORDERED that neither Tucson Electric Power nor UniSource shall  
18 commence construction of a second transmission line to Santa Cruz County until a new decision is  
19 issued in Docket Nos. L-00000C-01-0111 and L-00000F-01-0111.

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1 IT IS FURTHER ORDERED that TEP and UNS Electric shall file the final Environmental  
2 Impact Statement and any Federal Agencies Records of Decisions with the Commission as soon as  
3 they are made publicly available.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9  CHAIRMAN  COMMISSIONER  COMMISSIONER

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11  COMMISSIONER  COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 20<sup>th</sup> day of Jan., 2005.

18   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

19 DISSENT \_\_\_\_\_

21 DISSENT \_\_\_\_\_

SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY et al.

DOCKET NOS.:

L-00000C-01-0111, L-00000F-01-0111

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